

1 **AN ACT** *to amend* 16.425 (3), 70.11 (intro.), 70.11 (4), 70.337 (1) (intro.) and (2) and
2 74.11 (1); and *to create* 70.1103 and 70.116 of the statutes; **relating to:** requests for
3 exemption from the property tax for certain residential housing, the use of leasehold
4 income, and payments for municipal services provided to certain tax-exempt
5 residential housing.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Tax Exemptions for Residential Property (Columbus Park).

Revision and Reorganization of s. 70.11 (intro.) and (4), stats.

Under current law, property owned and used exclusively by certain entities specified under s. 70.11 (4), stats., is exempt from the property tax. This draft reorganizes s. 70.11 (4) to make it more readable and to place the types of property that are exempt under that section into separate statutory subdivisions.

This draft also revises the property tax exemption under current s. 70.11 (4) for "property owned by benevolent associations, including benevolent nursing homes and retirement homes for the aged" by organizing property owned by a benevolent association into the following statutory subdivisions:

- a. Nursing homes licensed under s. 50.03.
- b. Community based residential facilities licensed under s. 50.03.
- c. Adult family homes certified under s. 50.032 or licensed under s. 50.033.
- d. Residential care apartment complexes certified under s. 50.034.
- e. Domestic abuse shelters.
- f. Shelters for the homeless, including transitional housing facilities.
- g. Housing for low-income persons that is operated in compliance with section 3 of Internal Revenue Service (IRS) revenue procedure 96-32.

Section 3 of IRS revenue procedure 96-32 sets forth income eligibility limits for federal low-income housing programs.

h. A residential facility that provides alcohol or other drug abuse (AODA) treatment services or housing for persons with or recovering from AODA problems.

i. Residential housing that is not described under items a. through h. if the value of the housing does not exceed a certain percentage [not yet specified] of the average equalized value of residential property in the county.

j. Property that is not residential housing.

Under this revision, property owned by a benevolent association that is residential housing is subject to the property tax if it does not fit within any of the categories described under a. through i., above.

Nonresidential property owned and used exclusively by a benevolent association remains exempt from the property tax.

Requests for Property Tax Exemptions

Under current law, by March 31 of each even-numbered year, the owner of every parcel of property that is exempt from property taxes under s. 70.11, stats., must file a form with the clerk of the taxation district where the property is located. The form must include the owner's estimate of the fair market value of the property on January 1 of the even-numbered year. The assessor may review the estimate and adjust it if necessary to reflect the correct fair market value. If the form is not received when due, the clerk must send the property owner a notice that the property will be appraised at the owner's expense if a completed form is not received within 30 days. If the form is not received within 30 days, the property must be appraised by either the taxation district assessor or a person hired by the taxation district to conduct the appraisal.

The clerk of each taxation district is required to deliver to the department of revenue (DOR), by July 1 of each even-numbered year, a form on which the clerk estimates the value of all tax-exempt property, classified by type of owner, within the taxation district. DOR uses this information to prepare a document required under s. 16.425, entitled "Summary of Tax Exemption Devices".

Representatives of DOR told the special committee that DOR does not receive all of the statutorily required information from taxation clerks throughout the state for preparation of the "Summary of Tax Exemption Devices". In 2002, 370 of the 1,900 taxation districts in the state did not provide the required information to DOR. DOR also stated that it

appears that the value of much tax-exempt property is under reported by the owners of that property. For these reasons, it is difficult for DOR to carry out its statutory duty under s. 16.425 to report on the approximate costs in lost revenue of various tax exemptions. The statute also directs DOR to report on the effectiveness of the tax exemptions in achieving the policy purposes of the tax exemptions.

Under current law, an owner of property that was exempt the previous year is not required to apply for a property tax exemption for the current year. Property is exempt if it was exempt the previous year and the owner files a form with the assessor. An application is required for property that was not exempt the previous year, but many properties were “grandfathered” in when the requirement to submit an initial application was first established, and therefore, for many exempt properties, no application was ever submitted. For those properties, the taxing jurisdiction has very little information about the property or the activities of the owner claiming the exemption.

The draft requires a benevolent association that owns property described in newly created s. 70.11 (4) (c) 9., stats. (identified as “i.” in the previous section of this prefatory note), that wishes to claim a property tax exemption for the property to apply for an exemption from the assessor every year. The application must contain information regarding the benevolent activities of the owner and an appraisal of the fair market value of the property. Specifically, by March 1 of each year, the owner of each parcel of property for which the owner wishes to claim an exemption under s. 70.11 (4) (c) 9., as a benevolent association must file with the assessor of the taxation district in which the property is located a request, on a form prepared and approved by DOR, that the property be exempt from property taxes, and the basis for that request. Along with the request, the owner must provide all of the following:

- (a) The name and address of the owner of the property.
- (b) The acreage, legal description, and tax identification number of the property.
- (c) The date of acquisition of the property.
- (d) An appraisal of the fair market value of the property as of a date within 3 years of the request for exemption performed by an appraiser certified under chapter 458 of the statutes.
- (e) A statement indicating the amount of casualty insurance held on any improvements to the property.
- (f) Information regarding the benevolent activities in which the entity intends to engage at the property, including all of the following:

1. A description of the benevolent activities expected to be carried out at the property by the entity in the year for which the entity is requesting the exemption, including the approximate dollar value of those benevolent activities.
 2. A description of the organizations or individuals who are eligible to be the recipients of benevolent activities of the entity and a statement of the expected value of the tax exemption to the beneficiaries of the entity's benevolence.
 3. A description of the benefits, if any, provided to the members of the community at large by the entity's activity at the property.
- (g) A statement indicating whether any portion of the property was leased to another person during the preceding 2 years. If the property was leased, the statement shall identify the portion of the property that was leased, identify the lessee, and describe the ways in which the lease payments were used by the owner of the property.

Upon receipt of a request for exemption, the assessor must determine whether the request includes all the required information. The assessor may not grant an exemption under s. 70.11 (4) (c) 9. unless all of the required information is provided.

For every property granted an exemption under s. 70.11 (4) (c) 9., the clerk of the taxation district must calculate the amount of property tax that would have been levied if the property were not exempt. This information must be made available to the public and must be provided to DOR. DOR must include a statewide compilation of this information in the summary of tax exemption devices that it prepares every even-numbered year.

Each entity requesting an exemption must pay a reasonable fee to the taxation district. The governing body of the taxation district establishes the amount of the fee.

Payments for Municipal Services

This draft requires a benevolent association that owns property described in newly created s. 70.11 (4) (c) 9., stats., described above under par. "i.", to make payments for municipal services for all housing units in that category that do not have at least one occupant whose income meets the eligibility requirements for the homestead credit. The property owner has the burden of proving that a housing unit has an occupant whose income meets this requirement.

Payments for municipal services are subject to s. 74.11, stats., which sets forth dates for payments of taxes, special assessments, and special charges.

Use of Leasehold Income

Under current law, if property that is exempt from taxation under s. 70.11 is leased, the property retains its tax exemption only if the owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property or both. [s. 70.11 (intro.), stats.] This is commonly referred to as the “rent use” requirement”. As discussed in Staff Brief 04-5, prepared for the special committee, in *Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 761 N.W.2d 633 (2003), the Wisconsin supreme court stated that the rent use requirement applies to tax-exempt entities that lease property as residential housing.

Several persons testifying to the committee stated that some tax-exempt entities that lease property as residential housing currently use leasehold income for purposes that appear not to be permitted under the statute, and that if they were required to comply with the statute, they could face financial difficulties.

The draft provides that leasing residential housing that is exempt from property tax does not render the property taxable if the property owner uses all of the lease income to further its benevolent activities or in the case of a church or religious association, to further the activities of the church or association. In addition, a property owner may not discriminate based on race.

1 **SECTION 1.** 16.425 (3) of the statutes is amended to read:

2 16.425 (3) REPORT ON TAX EXEMPTION DEVICES. The department of revenue shall, in each
3 even-numbered year on the date prescribed for it by the secretary, furnish to the secretary a
4 report detailing the approximate costs in lost revenue, the policy purposes and to the extent
5 possible, indicators of effectiveness in achieving such purposes, for all state tax exemption
6 devices, including those based on the internal revenue code, in effect at the time of the report.
7 The report need relate only to chs. 71, 76 and 77 tax exemption devices and to property tax
8 exemptions for which reports are required under s. 70.337 and for which a request for

1 exemption is required under s. 70.1103. The report shall be prepared in such a manner as to
2 facilitate the making of comparisons with the information reported in s. 16.46 (1) to (6).

3 **SECTION 2.** 70.11 (intro.) of the statutes is amended to read:

4 **70.11 Property exempted from taxation.** (intro.) The property described in this
5 section is exempted from general property taxes if the property is exempt under sub. (1), (2),
6 (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or
7 ownership did not change in a way that makes it taxable; if the property was taxable for the
8 previous year, the use, occupancy or ownership of the property changed in a way that makes
9 it exempt and its owner, on or before March 1, files with the assessor of the taxation district
10 where the property is located a form that the department of revenue prescribes or if the
11 property did not exist in the previous year and its owner, on or before March 1, files with the
12 assessor of the taxation district where the property is located a form that the department of
13 revenue prescribes. Property described under sub. (4) (c) 9. is exempt only if the requirements
14 of s. 70.1103 are met with respect to that property. Leasing a part of the property described
15 in this section does not render it taxable if, except for property described under sub. (4) (c),
16 the lessor uses all of the leasehold income for maintenance of the leased property or
17 construction debt retirement of the leased property, or both, and, except for residential
18 housing, if the lessee would be exempt from taxation under this chapter if it owned the
19 property. Leasing property described under sub. (4) (c) as residential housing does not render
20 it taxable if the property owner uses all of the leasehold income to further the benevolent
21 activities of the owner, or, in the case of a church or religious association, to further the
22 activities of the church or association. Any lessor who claims that leased property is exempt
23 from taxation under this chapter shall, upon request by the tax assessor, provide records

1 relating to the lessor's use of the income from the leased property. Property exempted from
2 general property taxes is:

3 **SECTION 3.** 70.11 (4) of the statutes is amended to read:

4 70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS;
5 HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by
6 ~~educational~~ any of the entities described in this subsection while such property is used not for
7 profit. Property that is exempt from taxation under this subsection and is leased remains
8 exempt from taxation only if, in addition to the requirements specified in the introductory
9 phrase of this section, the property owner and the lessee do not discriminate on the basis of
10 race. The amount of land exempt under this subsection may not exceed 10 acres of land
11 necessary for location and convenience of buildings, except as provided in par. (b). This
12 subsection does not include property owned by an organization that is organized under s.
13 185.981 or ch. 611, 613, or 614 and that offers a health maintenance organization as defined
14 in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or by an
15 organization that is issued a certificate of authority under ch. 618 and that offers a health
16 maintenance organization or a limited service health organization or by any nonstock,
17 nonprofit corporation which services guaranteed student loans for others or on its own
18 account.

19 (a) Educational institutions offering regular courses 6 months in the year; ~~or by~~
20 ~~churches~~ and educational associations.

21 (b) Churches or religious, ~~educational or benevolent~~ associations, ~~including benevolent~~
22 ~~nursing homes and retirement homes for the aged but not including an organization that is~~
23 ~~organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance~~
24 ~~organization as defined in s. 609.01 (2) or a limited service health organization as defined in~~

1 ~~s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that~~
2 ~~offers a health maintenance organization or a limited service health organization and not~~
3 ~~including property owned by any nonstock, nonprofit corporation which services guaranteed~~
4 ~~student loans for others or on its own account, and also including property owned and used~~
5 ~~for housing for pastors and their ordained assistants, members of religious orders and~~
6 ~~communities, and ordained teachers, whether or not contiguous to and a part of other property~~
7 ~~owned and used by such associations or churches; or by women's, but not other types of~~
8 residential housing except for the property described in par. (c). Property owned by churches
9 or religious associations necessary for location and convenience of buildings, used for
10 educational purposes and not for profit, shall not be subject to the 10-acre limitation but shall
11 be subject to a 30-acre limitation.

12 (c) Benevolent associations, churches or religious associations if the property is any of
13 the following:

- 14 1. A nursing home licensed under s. 50.03.
- 15 2. A community based residential facility licensed under s. 50.03.
- 16 3. An adult family home certified under s. 50.032 or licensed under s. 50.033.
- 17 4. A residential care apartment complex certified under s. 50.034.
- 18 5. A domestic abuse shelter.
- 19 6. A shelter for the homeless, including transitional housing facilities.
- 20 7. Housing for low-income persons that is operated in compliance with section 3 of
21 Internal Revenue Service revenue procedure 96-32. The property owner shall provide the
22 assessor an affidavit stating that the property meets this requirement. For the purposes of this
23 subdivision, "project", when used in Internal Revenue Service revenue procedure 96-32,
24 includes property located on more than one tax parcel, if the parcels are owned or operated

1 by the same person and are adjacent, separated only by a street or other public right-of-way,
2 or within the same condominium development.

3 8. A residential facility that provides alcohol or other drug abuse treatment or services
4 or housing for persons with, or who are recovering from, alcohol or other drug abuse problems.

5 9. Residential housing that is not described under subds. 1. through 8., if the following
6 requirements are met:

7 a. For a property that is a single-family home, the property is exempt from the property
8 tax if the equalized value of the property does not exceed [] % of the average equalized value
9 of a residential parcel in the county the previous year, as determined by the department of
10 revenue.

11 b. For a property that is a duplex, the property is exempt from the property tax if the
12 equalized value of the property does not exceed [] % of the average equalized value of a
13 residential parcel in the county the previous year, as determined by the department of revenue.

14 c. For a property that consists of 3 or more dwelling units, a unit is exempt from the
15 property tax if the equalized value of the unit does not exceed [] % of the average equalized
16 value of a residential parcel in the county the previous year, as determined by the department
17 of revenue.

18 (cm) Benevolent associations if the property is nonresidential.

19 (d) Women's clubs; or by domestic,

20 (e) Domestic incorporated historical societies; or by domestic,

21 (f) Domestic incorporated, free public library associations; or by fraternal

22 (g) Fraternal societies operating under the lodge system (except university, college and
23 high school fraternities and sororities), but not exceeding 10 acres of land necessary for
24 location and convenience of buildings while such property is not used for profit. Property

1 ~~owned by churches or religious associations necessary for location and convenience of~~
2 ~~buildings, used for educational purposes and not for profit, shall not be subject to the 10-acre~~
3 ~~limitation but shall be subject to a 30-acre limitation. Property that is exempt from taxation~~
4 ~~under this subsection and is leased remains exempt from taxation only if, in addition to the~~
5 ~~requirements specified in the introductory phrase of this section, the lessee does not~~
6 ~~discriminate on the basis of race.~~

7 **SECTION 4.** 70.1103 of the statutes is created to read:

8 **70.1103 Request for exemption; benevolent associations.** (1) By March 1 of each
9 year, the owner of each parcel of property for which the owner wishes to claim an exemption
10 as a benevolent association under s. 70.11 (4) (c) 9. shall file with the assessor of the taxation
11 district in which the property is located a request, on a form prepared and approved by the
12 department of revenue, that the property be exempt from property taxes and the basis for that
13 request. Along with the request for exemption, the owner shall provide all of the following:

- 14 (a) The name and address of the owner of the property.
- 15 (b) The acreage, legal description, and tax identification number of the property.
- 16 (c) The date of acquisition of the property.
- 17 (d) An appraisal of the fair market value of the property as of a date within 3 years of
18 the request for exemption, performed by an appraiser certified under ch. 458.
- 19 (e) A statement indicating the amount of casualty insurance held on any improvements
20 to the property.
- 21 (f) Information regarding the benevolent activities in which the organization engages
22 or intends to engage at the property, including all of the following:

1 1. A description of the benevolent activities expected to be carried out at the property
2 by the entity in the year for which the entity is requesting the exemption, including the
3 approximate dollar value of those benevolent activities.

4 2. A description of the organizations or individuals who are eligible to be the recipients
5 of benevolent activities of the entity and a statement of the expected value of the tax exemption
6 to the beneficiaries of the entity's benevolence.

7 3. A description of the benefits, if any, provided to the members of the community at
8 large by the entity's benevolent activity at the property.

9 (g) A statement indicating whether any portion of the property was leased to another
10 person during the preceding 2 years. If the property was leased, the statement shall identify
11 the portion of the property that was leased, identify the lessee and describe the ways in which
12 the lease payments were used by the owner of the property.

13 (2) Upon receipt of a request for exemption under this section, the assessor of the
14 taxation district shall determine whether the request includes all the information required
15 under this section. The assessor of the taxation district may not exempt any parcel of property
16 from the property tax under s. 70.11 (4) (c) unless all of the information required under this
17 section is provided by the entity requesting the exemption with respect to that parcel.

18 (3) For every parcel exempt under s. 70.11 (4) (c) 9., the clerk of the taxation district
19 shall calculate the amount of property tax that would have been levied on the parcel if the
20 parcel were not exempt. This information shall be made available to the public and shall be
21 provided to the department of revenue under s. 70.337 (2). The department of revenue shall
22 include a statewide compilation of this information in the summary of tax exemption devices
23 prepared under s. 16.425.

1 (4) For each parcel exempt under s. 70.11 (4) (c) 9., the assessor of the taxation district
2 shall forward the information under sub. (1) (d) and (e) to the clerk of the taxation district.

3 (5) Each entity requesting an exemption under this section shall pay a reasonable
4 application fee to the taxation district. The amount of the fee shall be established by the
5 governing body of the taxation district.

6 **SECTION 5.** 70.116 of the statutes is created to read:

7 **70.116 Payments for municipal services; certain benevolent associations. (1)**

8 FINDINGS. Recognizing that the cost of property taxes is increasingly borne by residential
9 property owners, and that the property tax burden causes a financial hardship to some
10 residential property owners; recognizing that recently, benevolent associations have increased
11 development of residential property from which the associations exclude persons who do not
12 meet minimal financial standards set by the association, and that such property is exempt from
13 the property tax, although municipalities are nevertheless required to provide municipal
14 services to those properties and residents of those properties; and recognizing that numerous
15 statutes require payments for municipal services by tax-exempt entities other than benevolent
16 associations; the legislature finds and determines that benevolent associations should provide
17 payments for municipal services provided to residential property owned by the association
18 that is not recognized as primarily charitable in nature or serving a population with special and
19 significant needs for medical, nursing, mental health, or other similar services.

20 (2) DEFINITIONS. In this section:

21 (a) "Municipality" means a city, village, or town or special purpose district under
22 s.79.095 (1) (bm).

23 (b) "Municipal services" means solid waste management, as defined in s. 287.01 (13),
24 law enforcement and fire protection, street construction, repair and maintenance and all

1 eligible cost items under s. 86.303 (6) (a) through (c), traffic control, street lighting and snow
2 and ice removal and all eligible cost items under s. 86.303 (6) (a) through (c), public library
3 services, and any administrative or debt service costs associated with the provision of these
4 services.

5 (3) PAYMENTS. On or before January 31 of each year, the owner of any property
6 described in s. 70.11 (4) (c) 9. of the statutes shall pay as a special charge an amount determined
7 by the municipality as sufficient to defray the portion of the costs, including administrative
8 costs and debt service costs, of making municipal services available to the property and to
9 residents of the property, that is equal to the total cost of making those services available to
10 the property and its residents multiplied by the percentage of residential housing units on the
11 property that were not occupied by at least one person whose household income does not
12 exceed the maximum household income eligible for the homestead credit under s. 71.54 (1),
13 stats., for the current year or whose income at the time of the person's initial occupancy of the
14 housing did not exceed the maximum household income eligible for the homestead credit in
15 effect at that time. The property owner has the burden of proving that a residential housing
16 unit is occupied by at least one person whose income does not exceed, or did not exceed at the
17 time of initial occupancy, the maximum household income eligible for the homestead credit.

18 (4) ADMINISTRATION. The authority of a municipality to require payments under this
19 section is in addition to any other authority provided by law to a municipality. Payments under
20 this section are subject to s. 74.11, stats.

21 **SECTION 6.** 70.337 (1) (intro.) and (2) of the statutes are amended to read:

22 70.337 (1) (intro.) By March 31 of each even-numbered year, the owner of each parcel
23 of property that is exempt under s. 70.11, except property that is described under s. 70.11 (4)

1 (c) 9., shall file with the clerk of the taxation district in which the property is located a form
2 containing the following information:

3 (2) By July 1 of each even-numbered year, the clerk of each taxation district shall
4 complete and deliver to the department of revenue a form on which the clerk estimates the
5 value of tax-exempt property classified by type of owner, within the taxation district. For
6 property that is exempt under s. 70.11 (4) (c) 9., the clerk shall utilize property value
7 information received in the request for exemption for the property under s. 70.1103. At the
8 same time, the clerk shall also deliver to the department of revenue the information under s.
9 70.1103 (3).

10 **SECTION 7.** 74.11 (1) of the statutes is amended to read:

11 **74.11 Dates for payment of taxes, special assessments and special charges. (1)**

12 **APPLICABILITY.** General property taxes, special assessments, special charges and special taxes
13 collectible under this chapter and payments under s. 70.116 are payable as provided in this
14 section, except as provided in ss. 74.12, 74.125, and 74.87.

15 **SECTION 8. Initial applicability.**

16 **SECTION 9. Effective date.**

NOTE: Initial applicability and effective dates will be added to the draft
when these are determined by the working group.

17 (END)